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January 7, 1997

**Federal Communications Commission  
Office of Secretary**

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: *Competitive Safeguards for LEC Provision of CMRS*  
WT Docket 96-162  
Written Ex Parte Presentation

Dear Mr. Caton:

BellSouth Corporation, by its attorneys, wishes to take this opportunity to respond to points made in the reply comments filed in this proceeding by Radiofone, Inc. and CMT Partners. Radiofone makes numerous groundless allegations concerning allegedly discriminatory or anticompetitive conduct of BellSouth that, it argues, warrant maintaining the current structural separation for BOC LECs; CMT, in turn, cites some of the same allegations in Radiofone's comments as evidence of the need for structural separation. These allegations fall like a house of cards upon examination. They constitute no support for the maintenance or establishment of structural or nonstructural safeguards, for the reasons set forth herein.

First, Radiofone claims, as it did in its comments, that Radiofone's Baton Rouge cellular system was "not able to achieve interconnection with BellSouth until the Department of Justice informally intervened." (Radiofone Reply Comments at 1-2.) It offers no explanation of the nature of this "informal intervention" and cites no documentary evidence. It does not explain the nature of the impasse that allegedly prevented interconnection and provides *no* evidence that any discriminatory or anticompetitive conduct by BellSouth underlay Radiofone's apparent difficulty in obtaining the particular interconnection it desired. This lack of detail makes any response impossible. As BellSouth noted in its Reply Comments (at 17-18 n.60), BellSouth is unable to determine what Radiofone is complaining about.

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Second, Radiofone reiterates its reliance on "anticompetitive practices" alleged in a pending complaint proceeding, *Radiofone, Inc. v. BellSouth Mobility Inc.*, File No. E-88-109; CMT also cites this pending proceeding as evidence of a "pattern of abuses." (Radiofone Reply Comments at 2; CMT Reply Comments at 5.)<sup>1</sup> The allegations in that proceeding concern a roaming dispute, not interconnection, and they have nothing whatever to do with the intracorporate relationship of BellSouth's telephone and cellular operations. The "corporate structures" mentioned by Radiofone (Radiofone Reply Comments at 2) in connection with this dispute are the multiple wholesale and retail entities involved in BellSouth's provision of cellular service in Louisiana and not the cellular and telephone corporate structures involved in the instant proceeding. Accordingly, even assuming *arguendo* that Radiofone's allegations were found to have merit in the complaint proceeding, the alleged anticompetitive activity would not be a basis for imposing structural or nonstructural safeguards on LEC involvement in cellular or other CMRS.

In any event, the existence of unproved, unadjudicated allegations in a pending complaint proceeding does not constitute a basis for adoption of highly restrictive rules. The fact that Radiofone filed a complaint in 1988 and subsequently supplemented its complaint in 1991 and 1995 does not, as Radiofone claims (Radiofone Reply Comments at 6), demonstrate that enforcement action fails to deter "a continuing pattern of anticompetitive abuses." It proves only that a litigious complainant can pile allegation on allegation while a baseless enforcement action remains pending.

Third, Radiofone dredges up a six-year-old exchange of letters concerning Radiofone's desire for connection of its cellular system to the Louisiana state government's Centrex system. The two one-page letters it submits concerning this dispute indicate that BellSouth's telephone subsidiary, South Central Bell ("SBC"), was unable to provide the required connection because of incompatibility: The Centrex system was flat-rated, while the cellular system was usage-based, and the desired connection would have prevented SCB from measuring and billing for usage. (See Radiofone Reply Comments at 2, Appendix A.) Although SCB's 1990 letter invited Radiofone to discuss the matter further, the matter was apparently dropped. Now, six years afterward, having failed to follow up on the matter and having foregone the opportunity to bring any alleged dispute to regulators' attention in a complaint, Radiofone now claims that BellSouth's position was "wholly unjustified" and an "instance[] of interconnection abuse[]." This clearly is not the case. Moreover, there is no indication that this exchange of correspondence has any bearing on the need for structural or nonstructural safeguards concerning BellSouth's telephone and cellular operations.

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<sup>1</sup> In addition, CMT followed Radiofone's lead in mischaracterizing the Commission's decision in *Baton Rouge MSA Limited Partnership*, 8 FCC Rec. 2889 (1993). (See CMT Reply Comments at 5, Radiofone Comments at 2.) That decision did not required BellSouth "to provide roaming interconnection," as CMT claims, rather, as BellSouth has already stated, it would have required BellSouth to serve a competitor's roaming customers in that competitor's home market, so BellSouth declined the license. (See BellSouth Reply Comments at 17-18 n.60.) In any event, the decision has no relevance to interconnection or structural separation issues.

Fourth, Radiofone attempts to attribute to BellSouth certain alleged anticompetitive practices of SCB in the 1960s and early 1970s, when it was an AT&T subsidiary, many years before BellSouth even existed. (See Radiofone Reply Comments at 2-3, Appendix B.) Assuming *arguendo* the validity of Radiofone's allegations, they have no relevance at all in the instance proceeding for several reasons: (a) they are ancient history concerning AT&T's practices long before divestiture, not the practices of BellSouth or any other BOC today; (b) they involve interconnection arrangements for the primitive manual and automatic mobile telephone service of any earlier era, long before the Commission had adopted its current interconnection policies and long before the advent of cellular or PCS; and (c) they involve the consequences of state regulation of mobile telephone rates, which is no longer permissible in light of Section 332.

Fifth, Radiofone claims that BellSouth has, at some unspecified time, in some unspecified Louisiana Public Service Commission proceeding, followed an official policy of presenting a single corporate position on a cellular interconnection rate case instead of allowing officials from its telephone and cellular subsidiaries to present their own personal, allegedly conflicting, views. According to Radiofone, BellSouth "abused the regulatory process" by arriving at a single corporate position after internal debate. (Radiofone Reply Comments at 3.) In fact, the adoption of a single corporate position by a company encompassing both cellular and telephone interests is neither anticompetitive nor discriminatory.

While Radiofone made the first two of these points in its comments, to which BellSouth has already responded, Radiofone readily acknowledges that the three last points were newly raised in its reply comments. Radiofone admits that it has never before brought to the Commission's attention its allegations about the 1980 Centrex dispute and the intracorporate conspiracy and that it has not presented its allegations concerning pre-divestiture mobile telephone rates and interconnection practices "in any recent proceedings."<sup>2</sup> There are good reasons why it has not done so before now: These allegations are not evidence of anticompetitive or discriminatory activity and do not support the imposition of structural or nonstructural safeguards, and the practices of an AT&T local exchange subsidiary long before divestiture simply have no bearing on today's and tomorrow's CMRS regulatory environment.

Radiofone also contests BellSouth's view that "the fact that structural separation is not needed for PCS is the law of the case" after the Sixth Circuit's decision in *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752, 765-66 (1995). (See Radiofone Reply Comments at 6, quoting BellSouth Comments at 14.) That certainly was the

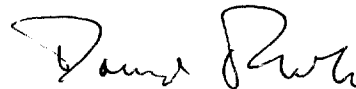
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<sup>2</sup> See Radiofone Reply Comments at 3. Radiofone provides no explanation for why it failed to present its "evidence" in a timely fashion - in the PCS rulemaking where elimination of the cellular structural separation rule was explicitly proposed, in the waiver proceedings, or even in its comments in this proceeding - and instead merely notes that "most of the evidence Radiofone has presented herein was not part of the record in the rulemaking proceeding concerning PCS safeguards, and was not part of the record in the waiver proceedings." *Id.* at 7.

premise on which the Court held that the Commission's continuation of structural separation for cellular was arbitrary and capricious. The Commission found structural separation unnecessary for PCS on the very same record that it found insufficient for elimination of the cellular separation rule, without providing any distinction warranting different treatment. Thus, the question on remand is whether, *given the decision that structural separation is not necessary for PCS and that there should be regulatory parity between PCS and cellular*, there is any articulated basis for imposing structural separation on cellular.

Radiofone further argues that the "evidence" discussed justifies the retention of cellular structural separation for BellSouth in particular, even if the rule were eliminated for other BOCs. (Radiofone Reply Comments at 7.) As discussed above, however, Radiofone's allegations do not constitute evidence supporting structural separation for BellSouth or any other BOC. Certainly, Radiofone has not shown that BellSouth uniquely poses a danger of cellular cross-subsidization or abusive cellular interconnection practices. At most, Radiofone has shown the BellSouth is a defendant in a complaint proceeding having nothing to do with interconnection or wireline subsidization of cellular service.

Respectfully submitted,



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cc: Michele Farquhar  
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